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3 CLERK, U.S. DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 -----oo0oo-----
11 PRISCILLA M. FRENCH,
12 Plaintiff,
13 v.
14 MARRIOTT INTERNATIONAL,
15 INC., MARRIOTT MAPLE RIDGE,
and DOES 1 through 100,
Inclusive,
16 Defendants.
17 -----oo0oo-----
18 A Final Pretrial Conference was held in this matter,
19 pursuant to the provisions of Rule 16(d) of the Federal Rules of
20 Civil Procedure and Local Rule 16-282, on September 3, 2002.
21 Christopher Whelan appeared as counsel for plaintiff Priscilla
22 French; David Tyra and William Jue appeared as counsel for
23 defendant Marriot International. Following the hearing, the
24 court enters this Final Pretrial Order:
25
I. Jurisdiction-Venue
26 Jurisdiction is predicated upon 28 U.S.C. § 1332
27 (diversity). Venue is undisputed and is hereby found to be
28

1 proper.

2 II. Jury-Nonjury

3 Plaintiff demands a jury trial. Accordingly, the
4 action shall be tried, pursuant to Fed. R. Civ. P. 48, before a
5 jury consisting of no less than six and no more than 12 members.

6 III. Jury Instructions and Proposed Form of Verdict

7 No later than ten court days before the trial date,
8 counsel for plaintiff shall lodge and serve, pursuant to Local
9 Rule 51-163, copies of all jury instructions which plaintiff
10 requests be given on plaintiff's claims. At that time, counsel
11 for plaintiff shall also file and serve a copy of a proposed
12 form of verdict.

13 No later than seven court days before the trial date,
14 counsel for defendants shall file and serve any objections to
15 the instructions proposed by plaintiff. At the same time,
16 counsel for defendants shall lodge and serve, pursuant to Local
17 Rule 51-163, copies of any and all jury instructions not already
18 proposed by plaintiff, which defendants request be given. Also
19 at that time, counsel for defendants shall file and serve a copy
20 of any proposed form of verdict and shall also file any
21 objections to plaintiff's proposed form of verdict.

22 No later than four court days before the trial date,
23 counsel for plaintiff shall file and serve any objections to the
24 instructions proposed by defendant and to any proposed form of
25 verdict.

26 Pursuant to Local Rule 51-163, any other instructions
27 thereafter presented will be refused unless it is shown either:
28 (1) that the necessity for the request arose in the course of

1 trial; could not reasonably have been anticipated prior to trial
2 from the pleadings, discovery or nature of the action; and the
3 request for such additional instructions is presented to the
4 Court as promptly as possible; or (2) that the refusal to give
5 such instructions would constitute plain error.

6 Likewise, any objections to proposed instructions not
7 made in accordance with this order will be overruled as untimely
8 unless it is shown either: (1) that the grounds therefor arose
9 in the course of trial and the intention to make such objections
10 is communicated to the Court as promptly as possible, or (2)
11 that the giving of such instructions would constitute plain
12 error.

13 IV. Voir Dire Questions

14 No later than seven court days before the trial date,
15 counsel for each party shall submit all proposed jury voir dire
16 questions.

17 V. Trial Briefs

18 No later than seven court days before the trial date,
19 counsel for each party shall file trial briefs, which shall
20 include any motions in limine, pursuant to Local Rule 16-285.
21 No later than four court days before trial, the parties may file
22 oppositions, if any, to the motions in limine.

23 VI. Undisputed/Disputed Factual Issues

24 Plaintiff's only claim in this action is one for
25 defamation under California law. All issues of fact with
26 respect to that claim remain in dispute and are subject to proof
27 at the time of trial.

28 ///

1 VII. Witnesses

2 (A) Plaintiff anticipates calling the witnesses
3 identified at Exhibit "A" attached hereto.

4 (B) Defendants anticipate calling the witnesses
5 identified at Exhibit "B" attached hereto.

6 (C) Except for retained experts, each party may call
7 any witness designated by any other party.

8 (D) No other witnesses will be permitted to testify
9 at trial unless:

10 (1) all parties stipulate that the witness may
11 testify;

12 (2) the party offering the witness demonstrates
13 that the witness is for the purpose of rebutting evidence which
14 could not have been reasonably anticipated at the time of the
15 Pretrial Conference; or

16 (3) the witness was discovered after the
17 Pretrial Conference.

18 (E) Testimony of a witness not designated in this
19 Order, which is offered under paragraph VII(D)(3), above, upon
20 the grounds that the witness was discovered after the Pretrial
21 Conference, will not be permitted unless:

22 (1) the testimony of the witness could not
23 reasonably have been discovered prior to the Pretrial
24 Conference;

25 (2) the court and opposing counsel were promptly
26 notified upon discovery of the testimony; and

27 (3) counsel proffered the witness for deposition
28 if time permitted or provided all opposing counsel a reasonable

1 summary of the testimony if time did not permit a deposition.

2 VIII. Exhibits

3 (A) Plaintiff intends to offer the exhibits
4 identified at Exhibit "C" attached hereto.

5 (B) Defendants intend to offer the exhibits
6 identified at Exhibit "D" attached hereto.

7 (C) Each party may offer any exhibit designated by
8 any other party.

9 (D) No other exhibits will be received in evidence
10 unless:

11 (1) all parties stipulate that the exhibit may
12 be received in evidence;

13 (2) the party offering the exhibit demonstrates
14 that the exhibit is for the purpose of rebutting evidence which
15 could not have been reasonably anticipated at the time of the
16 Pretrial Conference; or

17 (3) the exhibit was discovered after the
18 Pretrial Conference.

19 (E) An exhibit not designated in this Order, which is
20 offered under paragraph VIII(D)(3), above, upon the grounds that
21 the exhibit was discovered after the Pretrial Conference, will
22 not be received in evidence unless:

23 (1) the exhibit could not reasonably have been
24 discovered prior to the Pretrial Conference;

25 (2) the court and opposing counsel were promptly
26 notified upon discovery of the exhibit; and

27 (3) counsel provided copies of the exhibit to
28 all opposing counsel if physically possible or made the exhibit

1 reasonably available for inspection by all opposing counsel if
2 copying was not physically possible.

3 (F) Each party shall exchange copies of all exhibits
4 identified in this Order, or make them reasonably available for
5 inspection by all other parties, not later than thirty calendar
6 days before the trial date. Any and all objections to such
7 exhibits shall be filed and served not later than fourteen
8 calendar days before the trial date.

9 (G) The attorney for each party is directed to appear
10 before trial and present an original (and if physically possible
11 one copy) of each exhibit to Deputy Clerk Sally Hoover at 8:30
12 a.m. on the date of trial.

13 (H) Each exhibit which has been designated in this
14 Order and presented on the morning of the date of trial shall be
15 pre-marked by counsel. Plaintiff's exhibits shall bear numbers;
16 defendants exhibit shall bear letters. If no objection has been
17 made to such exhibit pursuant to paragraph VIII(F), above, such
18 exhibit will require no further foundation and will be received
19 in evidence upon the motion of any party at trial.

20 IX. Further Discovery and Motions

21 Except for motions in limine, no further motions shall
22 be brought before trial except upon order of the court and upon
23 a showing of manifest injustice. Fed. R. Civ. P. 16(e). No
24 further discovery will be permitted except by the express
25 stipulation of all parties or upon order of the court and upon a
26 showing of manifest injustice. Id.

27 X. Use of Depositions or Interrogatories

28 No later than twenty calendar days before the trial

1 date, counsel for each party shall file and serve a statement
2 designating all answers to interrogatories and all portions of
3 depositions intended to be offered or read into evidence, with
4 the exception of portions to be used only for impeachment or
5 rebuttal. No later than ten calendar days before the trial
6 date, counsel for any other party may file and serve a counter-
7 designation of other portions of the same depositions intended
8 to be offered or read into evidence and may file evidentiary
9 objections to any other parties' designation. No later than
10 seven calendar days before the trial date, the parties may file
11 evidentiary objections to any other party's counter-designation.

12 XI. Date and Length of Trial

13 The trial is set for October 29, 2002, at 9:00 a.m. in
14 Courtroom No. 5. The court estimates that trial will last
15 approximately eight trial days.

16 XII. Daubert Procedure

17 Any challenges based on Daubert v. Merrell Dow
18 Pharmaceuticals, Inc., 509 U.S. 579 (1993) and Kumho Tire Co.
19 v. Carmichael, 119 S. Ct. 1167 (1999) will be raised and
20 resolved outside the presence of the jury just prior to when the
21 challenged expert will be called to give testimony. Any
22 challenged expert shall be present for such a challenge, and
23 shall be available for questioning.

24 XIII. Evidence Presentation Equipment

25 The court does not have the state-of-the-art audio
26 visual equipment or support personnel necessary for the
27 effective presentation of evidence by electronic means. Counsel
28 are therefore encouraged to present their documentary evidence

1 by conventional means. If any party feels that electronic
2 presentation is absolutely necessary, they should bring their
3 own audio visual equipment to the courtroom and be prepared to
4 operate it themselves.

5 XIV. Settlement Conference

6 A Settlement Conference is set before the Honorable
7 William B. Shubb, on September 6, 2002 at 1:30 p.m.

8 Both sides have stipulated to the trial judge acting
9 as the settlement judge and waive disqualification by virtue
10 thereof.

11 Each party is ordered to have a principal with full
12 settlement authority present at the conference or be fully
13 authorized to settle the matter on any terms.

14 XV. Objections to Pretrial Order

15 Any objections or suggested modifications to this
16 Pretrial Order shall be filed and served within five court days
17 from the file-stamped date of this Order. All references herein
18 to the date of this Order shall refer to the date the tentative
19 order is filed and not to the date any amended order is filed.
20 If no objections or modifications are made, this Order will
21 become final without further order of the Court and shall
22 control the subsequent course of the action, pursuant to Rule
23 16(e) of the Federal Rules of Civil Procedure.

24 DATED: September 5, 2002

25 
26 WILLIAM B. SHUBB
27 UNITED STATES DISTRICT JUDGE
28

Exhibit "A"

Plaintiff's Witnesses

1. Banda, JoAnn
2. DeShon, Terri
3. Eden, Mike
4. Favila, Barbara
5. French, Hanna
6. French, Jenni
7. French, Priscilla
8. Gallaher, Bill
9. Holtzer, Catherine
10. Rose, Ron
11. Virga, John
12. Virga, Michael
13. Virga, Patricia
14. Voss, Chad
15. Vostry-Ritter, Les
16. Wilkes, Lisa

Exhibit "B"

Defendants' Witnesses

1. Priscilla French
2. Barbara Favila
3. Les Vostry-Ritter
4. Ron Rose
5. Mike Eden
6. Lisa Wilkes
7. Catherine Holtzer
8. JoAnn Banda
9. Teri DeShon
10. Chad Voss

Exhibit "C"

Plaintiff's Exhibits

Exhibits from Priscilla French's depositions, Vol. I and Vol. II

- A. Letter to Priscilla French from Dennis Parnell, dated January 20, 1999, 2 pages.
- B. 1999 Sales Compensation Plan for Director of Sales, 2 pages.
- C. Conditions of Employment, 1 page.
- D. Employment Application, 3 pages.
- E. Job Description of Director of Sales, 4 pages.
- F. Journal entries of Priscilla French, 24 pages.
- G. Chronicle of events that led to the termination of Priscilla M. French, 4 pages.
- H. Sales & Marketing performance evaluation, dated 3-7-00, 4 pages.
- I. Small Stuff Incentive Program Payment Form, 1 page.
- J. Document on Marriott letter head entitled "RES. Per 4 for bonus," 1 Page.
- K. Senior Living Services Notice of Disciplinary Action, 1 page.
- L. Marriott Maple Ridge of Laguna Creek Reservation Log, 5 pages.
- M. Memo from Gina M. D'Angelo dated February 4, 2000 re: MMR 2000 Sales Incentive - Sweat the Small Stuff, 6 pages.
- N. Inquiry Status Report as of 4/28/00, 5:10 p.m., 3 pages.
- O. Handwritten notes, 8 pages.
- P. E-mail message from Pris French to J. Kinchelow dated

1 4/19/00, 1 page.

2 Q. E-mail from Pris French to J. Kinchelow dated 4/19/00,
3 2 pages.

4 R. E-mail from Pris French to J. Kinchelow dated 4/20/00,
5 1 page.

6 S. Questions to consider: by Priscilla French dated
7 6/28/00, 1 page.

8 L. Reservation Log

9 T. Documents regarding French termination faxed to Holtzer
10 from Favila.

11 **Additional Exhibits:**

12 1. Favila Declaration in support of Summary Judgment
13 motion with attachments.

14 2. Favila Deposition.

15 3. Vostry-Ritter Declaration in support of Summary
16 Judgment motion with attachments.

17 4. Vostry-Ritter Deposition.

18 5. French Declaration in Opposition to Summary Judgment
19 with Attachments.

20 6. EDD notice of Appealed Determination from EDD - 3
21 pages.

22 7. 6/8/2000 letter from Chad Voss, The Frick Co. to EDD
23 [French 44-45].

24 8. EDD notice of redetermination to the Frick Co. [French
25 46-47].

26 9. Record of Interview for Termination by EDD [French 50-
27 54].

28 10. Whelan letter to Marriott 6/7/00 apology and clearing

1 up name {French 70-71] and responsive letter from Marriott.

2 11. Guarantee of Fair Treatment [French 77].

3 12. Certificates of Achievement [French 75-76].

4 13. Reservation Agreement for Art Reber-by Favila 4/12/00.

5 14. Reservation Agreement for Howard Yamagata by JoAnn
6 Banda 3/13/00.

7 15. Reservation Agreement for Mabel R. Lynch by JoAnn
8 Banda 3/16/00.

9 16. Reservation Agreement for Bertha M. Weiland by JoAnn
10 Banda 4/12/00 [MAR 115].

11 17. Reservation Agreement for Wilda Plocher by JoAnn Banda
12 [MAR 95].

13 18. Reservation Agreement for Susan Seaton by Pris French
14 [MAR 99].

15 19. Reservation Agreement for Fanny Mirsky by Pris French
16 [MAR 109].

17 20. Reservation Agreement for Pris French [MAR 109]

18 21. Inquiry Information Card for Dorothy Kinney by French
19 [MAR 110].

20 22. Check copy for Dorothy Kinney [MAR 112].

21 23. Inquiry Information Card for Bertha Weiland 4/1/00 [MAR
22 113].

23 24. 5/18/2000 letter re: refund request for Bertha Weiland
24 [MAR 114].

25 25. Reservation Agreement for Dorothy Kinney by Pris
26 French [MAR 111].

27 26. Reservation Agreement for Francis Vostry; "Responsible
28 Party" Les Vostry-Ritter 4/19/00 with check attached [MAR 116-

1 117].

2 27. Reservation Agreement for Lillian O'Kelly by Terri
3 DeShon with check attached.

4 28. Reservation Agreement for Bob Klein by JoAnn Banda
5 4/17/00 [MAR 82].

6 29. Reservation Agreement for James Larsen by Les Vostry-
7 Ritter 4/5/00 [MAR 106].

8 30. Reservation Agreement for James Larsen by Les Vostry-
9 Ritter 4/5/00 [MAR 106].

10 31. French time card for 4/22/00-5/4/00.

11 32. French Handwritten notes [French 25-32].

12 33. Christine A. Ruppert's letter to Whelan 6/29/2000 [MAR
13 43-44].

14 34. May 12, 2000 Banda letter to Marcia Kreil for Art
15 Reber [MAR 92].

16 35. Inquiry Information Card for James Wilson by French
17 [MAR 105].

18 36. All Documents produced by Defendants in Discovery,
19 including but not limited to MAR 0001-MAR0117 and unnumbered
20 documents produced by Defendants on September 19, 2001.

21 37. All Documents produced by Plaintiff in Discovery,
22 including documents numbered 0000001-00000077.

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Exhibit "D"

Defendants' Exhibits

3 A. Letter to Priscilla French from Dennis Parnell, dated
4 January 20, 1999, 2 pages.

5 B. 1999 Sales Compensation Plan for Director of Sales, 2
6 pages.

7 C. Conditions of Employment, 1 page.

8 D. Employment Application, 3 pages.

9 E. Job Description of Director of Sales, 4 pages.

10 F. Journal entries of Priscilla French, 24 pages.

11 G. Chronicle of events that led to the termination of
12 Priscilla French, 4 pages.

13 H. Sales & Marketing Performance Evaluation, dated
14 3-7-00, 4 pages.

15 I. Small Stuff Incentive Program Payment Form, 1 page.

16 J. Document on Marriott letterhead entitled "RES. Per 4
17 for bonus," 1 page.

18 K. Senior Living Services Notice of Disciplinary Action, 1
19 page.

20 L. Marriott MapleRidge of Laguna Creek Reservation Log, 5
21 pages.

22 M. Memo from Gina M. D'Angelo dated February 4, 2000 re:
23 MMR 2000 Sales Incentive - Sweat the Small Stuff, 6 pages.

24 N. Inquiry Status Report as of 4/28/00, 5:10 p.m., 3
25 pages.

26 O. Handwritten notes, 8 pages.

27 P. E-mail message from Pris French to J. Kinchelow dated
28 4/19/00, 1 page.

1 Q. E-mail from Pris French to J. Kinchelow dated 4/19/00,
2 pages.

3 R. E-mail from Pris French to J. Kinchelow dated 4/20/00,
4 1 page.

5 S. Questions to consider: by Priscilla French dated
6 6/28/00, 1 page.

7 T. French declaration in Opposition to Motion for Summary
8 Judgment, and any attachments thereto.

9 U. Weiler Reservation Documents, MAR 75 - 77.

10 V. Hazel Clark Inquiry Information Card, MAR 78.

11 W. Bob Klein Reservation Documents, MAR 81 - 83.

12 X. Art Reber Inquiry Information Card, MAR 90.

13 Y. Art Reber Reservation Agreement, MAR 93.

14 Z. Wilda Polcher Reservation Documents, MAR 94 - 97.

15 AA. Susan Seaton Reservation Documents, MAR 98 - 99.

16 BB. Note re Fanny Mirsky by plaintiff, MAR 107.

17 CC. Documents from Favila to Holtzer, MAR 47 - 54.

18 DD. Reservation Agreement for Bertha M. Weiland by JoAnn
19 Banda 4/12/00, MAR 115.

20 EE. Reservation Agreement for Wilda Plocher by JoAnn
21 Banda, MAR 95.

22 FF. Reservation Agreement for Susan Seaton by Pris French,
23 MAR 99.

24 GG. Reservation Agreement for Fanny Mirsky by Pris French,
25 MAR 109.

26 HH. Inquiry Information Card for Dorothy Kinney by French,
27 MAR 110.

28 II. Check copy for Dorothy Kinney, Mar 112.

1 JJ. Inquiry Information Card for Bertha Weiland 4/1/00,
2 MAR 113.

3 KK. 5/18/2000 letter re: refund request for Bertha
4 Weiland, MAR 114.

5 LL. Reservation Agreement for Dorothy Kinney by Pris
6 French, MAR 111.

7 MM. Reservation Agreement for Francis Vostry; "Responsible
8 Party" Les Vostry-Ritter 4/19/00 with check attached, MAR 116 -
9 117.

10 NN. Reservation Agreement for James Larsen by Les
11 Vostry-Ritter 4/5/00, MAR 106.

12 OO. May 12, 2000 Banda letter to Marcia Kreil for Art
13 Reber, MAR 92.

14 PP. Inquiry Information Card for James Wilson by French,
15 MAR 105.

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United States District Court
for the
Eastern District of California
September 9, 2002

* * CERTIFICATE OF SERVICE * *

2:01-cv-01070

French

v.

Marriott Intl Inc

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on September 9, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Christopher H Whelan
Law Offices of Christopher H Whelan
11246 Gold Express Drive
Suite 100
Gold River, CA 95670

SH/WBS

William Skipworth Jue
Seyfarth Shaw
400 Capitol Mall
Suite 2350
Sacramento, CA 95814-4420

Jack L. Wagner, Clerk

BY:


Deputy Clerk